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1 MICHAEL L. TRACY, ESQ., SBN 237779  
 2 MTRACY@MICHAELTRACYLAW.COM  
 3 MEGAN E. ROSS, ESQ., SBN 227776  
 4 MROSS@MICHAELTRACYLAW.COM  
 5 LAW OFFICES OF MICHAEL TRACY  
 6 2030 Main Street, Suite 1300  
 7 Irvine, CA 92614  
 8 T: (949) 260-9171  
 9 F: (866) 365-3051

2013 SEP 10 PM 2:11

CLERK U.S. DISTRICT COURT,  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

Attorney for Plaintiff JOHN MITCHELL

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

## WESTERN DIVISION

CV 13-06624-FMD  
(PSW)

JOHN MITCHELL, an individual, on  
 behalf of himself and all others similarly  
 situated,

Plaintiff

vs.

MEDTRONIC, INC., A MINNESOTA  
 CORPORATION,

Defendant

Case No.:

**CLASS ACTION COMPLAINT FOR  
 UNPAID OVERTIME UNDER  
 CALIFORNIA LABOR CODE,  
 MEAL BREAKS, OVERTIME  
 UNDER THE FLSA, WAITING  
 TIME PENALTIES AND UNFAIR  
 BUSINESS PRACTICES**

**DEMAND FOR JURY TRIAL**

Plaintiff, JOHN MITCHELL, alleges:

**JURISDICTION**

1. This Court has jurisdiction over this matter because this complaint  
 alleges a federal question in that violations of 29 U.S.C. § 201 *et seq.* are alleged.

2. This court has supplemental jurisdiction of all the State law claims  
 under 28 U.S.C. § 1367(a). The State law claims are all related to the same facts –  
 namely whether Plaintiff performed work and was not paid overtime wages and  
 whether that failure to pay was willful. As such, all the claims make up the same

1 case or controversy under Article III of the United States Constitution.

2 3. This Court has jurisdiction over this case under the Class Action  
3 Fairness Act of 2005. As alleged below, MITCHELL is a citizen of California and  
4 Defendant is not a citizen of California. There are more than 100 class members, and  
5 the amount in controversy is in excess of \$5,000,000.

6  
7 **GENERAL ALLEGATIONS**

8 4. This Court is the proper court and this action is properly filed in the  
9 County of Los Angeles and in this judicial district because Defendants do business in  
10 the County of Los Angeles, and because Defendants' obligations and liabilities arise  
11 therein, and because the work that was performed by Plaintiff in the County of Los  
12 Angeles is the subject of this action.

13 **PARTIES**

14 5. Plaintiff JOHN MITCHELL ("MITCHELL") was jointly employed by  
15 Defendants from November 24, 2008 through the August 31, 2011. MITCHELL is a  
16 citizen of California.

17 6. Defendant MEDTRONIC INC. ("MEDTRONIC") is a Minnesota  
18 Corporation doing business in the County of Los Angeles, State of California.  
19 MEDTRONIC is not a citizen of California.

20 **CLASS ACTION ALLEGATIONS**

21 7. Plaintiff brings this action on behalf of himself and all others similarly  
22 situated as a Class Action pursuant to Rules 23(a), (b)(1), (b)(2) and (b)(3). Plaintiff  
23 seeks to represent a class of all Sales Associates who are currently employed or have  
24 been employed by defendants within the State of California who: (1) at any time four  
25 (4) years prior to the filing of the SULTAN LAWSUIT did not have their overtime  
26 regular rate of pay calculated to include all remuneration, and (2) at any time four (4)  
27 years prior to the filing of the SULTAN LAWSUIT were not given the premium  
28 wages mandated for missing meal breaks.

1       8.     JOHN Sultan filed a class action lawsuit against MEDTRONIC on May  
2 13, 2011. ("SULTAN LAWSUIT")

3       9.     The statute of limitations on these claims was tolled as of the date of the  
4 SULTAN LAWSUIT.

5       10.    Until April of 2011 MEDTRONIC maintained a company-wide policy  
6 of not paying employees for missed breaks.

7       11.    Plaintiff and class members routinely worked in excess of five hours per  
8 day and were not provided meal breaks by the company.

9       12.    Plaintiff and class members desired their full thirty-minute meal breaks  
10 and were denied the ability to take them by the company.

11       13.    Plaintiff and class members had never been paid additional wages for  
12 missed meal breaks during employment until April 2011.

13       14.    Plaintiff and class members were not paid their overtime compensation  
14 in accordance with their regular rate of pay.

15       15.    Plaintiff and class members earned commissions based on sales of  
16 various medical devices.

17       16.    Sometime in 2010, MEDTRONIC started computing the commissions  
18 in the calculation of the regular rate of pay on which overtime is based.

19       17.    Prior to 2010, MEDTRONIC did not include the commission payments  
20 in computation of the regular rate of pay.

21       18.    MEDTRONIC became aware that their policy was illegal and changed it  
22 to compute the commissions in the regular rate of pay but never paid the employees  
23 the previously unpaid amounts.

24       19.    MEDTRONIC knew it had unpaid wages due to the employees who  
25 earned commission wages but refused to pay these wages to the employees.

26       20.    Instead, MEDTRONIC attempted to have the employees sign releases of  
27 wages owed even though MEDTRONIC fully knew that there were undisputed  
28 wages that were due to the employees.

1        21. Beginning in April 2011, MEDTRONIC started paying employees one  
2 hour of pay each time they worked in excess of five (5) hours without receiving a  
3 meal break.

4        22. MEDTRONIC'S policy for paying for missed meal breaks changed in  
5 April 2011. Prior to this date they did not pay any additional wages for missed meal  
6 breaks, and after this date the company automatically pays an additional hour of pay  
7 when an employee misses a meal break.

8        23. Beginning in April 2011, the company does not inquire as to whether an  
9 employee was "provided" a meal break but simply pays the additional hour of pay  
10 when a Sales Associate did not take a meal break.

11       24. MEDTRONIC contends that its current policy of automatically paying  
12 the additional hour of pay was not required by statute but was simply a feature put  
13 into the new payroll system to pay the employees additional wages to which they  
14 would not otherwise be entitled to.

15       25. In particular, MEDTRONIC contends that "For a brief period beginning  
16 in April 2011, in connection with a changeover to a new electronic timekeeping  
17 system called Kronos, the Kronos system was initially calibrated to make payments  
18 to employees who did not clock out for a 30 minute meal period. Medtronic  
19 discovered this mis-calibration, it promptly corrected it, and those payments ceased."

20       26. The Sales Associates' normal work day consisted of 8 hours of work  
21 with overtime being paid for work beyond this period.

22       27. The Sales Associates' normal work week consisted of 40 hours of work  
23 with overtime being paid for work beyond this period.

24       28. The extra hour of pay for the missed meal was paid for work within the  
25 Sales Associate's normal work hours and/or regular working hours. That is, if an  
26 employee did not take a break on a given day after 5 hours of work, the employee  
27 would receive one additional hour of pay. This would occur even if the employee  
28 only worked 7 hours that day and did not receive any overtime pay for that day.

1        29. The issue is that if that same employee worked more than 40 hours in  
2 the week, then additional hour of pay that was paid for missing the meal was not  
3 included in the regular rate of pay. MEDTRONIC contends that any additional  
4 compensation was not required by statute but was simply paid voluntarily by  
5 MEDTRONIC.

6        30. Even if the employee worked more than 8 hours in a day, the additional  
7 pay was not included in the regular rate of pay.

8        31. MEDTRONIC does did perform any individualized analysis of whether  
9 to pay the additional wages for a missed meal break.

10       32. MEDTRONIC did not include all proper remuneration when calculating  
11 employee's regular rate of pay.

12       33. Specifically MEDTRONIC did not include missed meal break  
13 premiums when calculating an employee's regular rate of pay. That is, any premium  
14 payments made for missed meals must be included as compensation is calculating  
15 the regular rate of pay on which overtime is paid. In addition, any commission or  
16 "bonus" payments made to the employees should have been included in the regular  
17 rate of pay.

18       34. MEDTRONIC keeps time and payroll records which show when  
19 employees missed their meal breaks. MEDTRONIC also keeps payroll records that  
20 show when additional wages were paid for missed meals.

21       35. MITCHELL is informed and believes that after August, 2011,  
22 MEDTRONIC moved all the Sales Associate positions to Texas and that  
23 MEDTRONIC did not employ Sales Associates within California after that date.

24       36. The Class Members of the following classes can be easily be determined  
25 by looking at existing MEDTRONICS time and payroll records.

26       37. Plaintiff proposes the following Class which will be referred to as the  
27 "Missed Breaks Class:"

28       All Sales Associates employed by MEDTRONICS within

1 California at any time between May 11, 2007 and April 1, 2011.

2 38. Plaintiff proposes the following Class which will be referred to as the  
3 "Regular Rate of Pay Class:"

4 All Sales Associates employed by MEDTRONICS within  
5 California at any time between May 11, 2007 and August 31,  
6 2011 who received premium payments for missed meals,  
7 commissions, or bonuses, and who worked some overtime during  
8 the same week for which the premium payment was received.

9 39. Plaintiff proposes the following Class which will be referred to as the  
10 "Waiting Time Penalty Class:"

11 All members of either the Missed Break Class or Regular Rate of  
12 Pay class whose employment with MEDTRONIC ended within  
13 three (3) years of the filing of this lawsuit.

14 40. This action has been brought and may properly be maintained as a class  
15 action under Rule 23 because there is a well-defined community of interest in the  
16 litigation and the proposed class is easily ascertainable.

17 41. A Class Action is a superior method for bringing this action in that there  
18 is a well defined community of interest in the questions of law and fact. Questions of  
19 law and fact common to the class action include, but are not limited to:

- 20 a. Whether EMPLOYER failed to pay proper premium wages for  
21 EMPLOYEES missed meal breaks.
- 22 b. Whether the premium payment for missed breaks, commission  
23 payments, and certain bonuses need to be included in the regular rate  
24 of pay under California law.
- 25 c. Whether the premium payment for missed breaks needs to be  
26 included in the regular rate of pay under the FLSA.

27 42. Plaintiff and the Class Action Plaintiffs are similarly situated, have  
28 substantially similar job duties, have substantially similar pay provisions, and are all

1 subject to Defendants' illegal labor violations.

2       43. The claims of the Plaintiff are typical of those of the class, and Plaintiff  
3 will fairly and adequately represent the interests of the class. Plaintiff has missed  
4 meal breaks and not been paid for them during the pre-April 2011 timeframe and has  
5 been paid for missed breaks post-April 2011 but not had the value included in his  
6 regular rate of pay. In addition, Plaintiff received commission payments that were  
7 not calculated in computing his regular rate of pay. Plaintiff will represent the  
8 interests of the class to maximize the payments that class members are entitled to  
9 under the law and ensure that all proper wages and penalties are paid to class  
10 members.

11       44. The persons of this class are so numerous that the joinder of all such  
12 persons is impracticable and that disposition of their claims in a class action rather  
13 than in individual actions will benefit the parties and the Court. While the precise  
14 number of proposed class members has not yet been determined, Plaintiff is informed  
15 and believes that Defendants currently employ, and during the relevant time periods  
16 employed, over 300 putative class members.

17       45. The prosecution of separate actions by individual members of the Class  
18 would create the risk of inconsistent and varying adjudications, establishing  
19 incompatible standards of conduct for Defendants.

20       46. The questions of law and fact common to the members of the Class  
21 predominate over any questions affecting only individual member, including legal  
22 and factual issues relating to liability and damages.

23       47. Class action treatment will allow those similarly situated person to  
24 litigate their claims in the manner that is most efficient and economical for the  
25 parties and the judicial system. Plaintiff is unaware of any difficulties that are likely  
26 to be encountered in the management of this action that would preclude its  
27 maintenance as a class action.

28       48. In the event that the Court determines at the notice stage or anytime



1 thereafter that all plaintiffs and members of the class action, are not "similarly  
2 situated," the definition may be modified or narrowed, and/or appropriate subclasses  
3 may be established based on business unit or otherwise.

#### 4 **COLLECTIVE ACTION ALLEGATIONS**

5 49. Plaintiffs bring the Third Cause of Action for violation of the Fair Labor  
6 Standards Act (hereinafter "FLSA") as a collective action pursuant to Section 16(b)  
7 of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons who are potential members  
8 of the Regular Rate of Pay Class ("Collective Action Plaintiffs").

9 50. The Third Cause of Action for violations of the FLSA is being brought  
10 and maintained as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b) for all  
11 violations of the FLSA.

12 51. A Collective Action is a superior method for bringing this action in that  
13 there is a well defined community of interest in the questions of law and fact.  
14 Questions of law and fact common to the collective action include, but are not  
15 limited to:

- 16 a. Whether MEDTRONIC failed and continues to fail to pay overtime  
17 compensation at EMPLOYEES proper regular rate of pay in  
18 violation of the FLSA, 29 U.S.C. § 201, *et seq.*

19 52. Plaintiff and the Collective Action Plaintiffs are similarly situated, have  
20 substantially similar job duties, have substantially similar pay provisions, and are all  
21 subject to Defendants' refusal to pay proper overtime in violation of the FLSA. The  
22 claims of the Plaintiff are typical of those of the class and plaintiff will fairly and  
23 adequately represent the interests of the class.

24 53. The persons of this class are so numerous that the joinder of all such  
25 persons is impracticable and that disposition of their claims in a class action rather  
26 than in individual actions will benefit the parties and the court. In addition, each  
27 class member must give his or her permission to be represented in this action under  
28 the "opt-in" provisions of 29 U.S.C. § 216(b).



1       54. In the event that the Court determines at the notice stage or anytime  
2 thereafter that all Plaintiffs and members of the collective action, as defined above,  
3 are not "similarly situated," the definition may be modified or narrowed, and/or  
4 appropriate subclasses may be established based on business unit or otherwise.

5  
6                   **FIRST CAUSE OF ACTION**

7       **FAILURE TO PAY OVERTIME COMPENSATION UNDER CALIFORNIA**  
8       **INDUSTRIAL WELFARE COMMISSION ORDERS AND CALIFORNIA**  
9       **LABOR CODE**  
10       **(AGAINST MEDTRONIC)**

11       55. Plaintiff refers to and incorporates by reference Paragraphs 1 through  
12 54.

13       56. This cause of action is brought against MEDTRONIC.

14       57. This cause is brought on behalf of the Regular Rate of Pay Class.

15       58. Pursuant to Industrial Welfare Commission Order No. 4-2001,  
16 California Code of Regulations, Title 8, § 11040, for the period of Plaintiff's  
17 employment, Defendants were required to compensate Plaintiff for all overtime,  
18 which is calculated at one and one-half (1 ½) times the regular rate of pay for hours  
19 worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2)  
20 times the regular rate of pay for hours worked in excess of twelve (12) hours in a day  
21 of hours worked in excess of eight (8) hours on the seventh consecutive work day in  
22 a week.

23       59. Plaintiff MITCHELL worked more than eight (8) hours in a single  
24 workday or forty (40) hours in a single workweek on numerous occasions.

25       60. Plaintiff MITCHELL was entitled to the above overtime premiums.

26       61. Defendants did not pay Plaintiff premium wages of at least one and one-  
27 half times Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

28       62. Defendants did not pay Plaintiff premium wages of at least one and one-

1 half times Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

2 63. Defendants did not pay Plaintiff premium wages of at least two times  
3 Plaintiff's regular rate of pay for hours worked past twelve (12) in a day.

4 64. Plaintiff MITCHELL worked at least one pay period in which he was  
5 not properly paid overtime within the three (3) years prior to the initiation of this  
6 lawsuit.

7 65. Defendants know or should know the actual dates of overtime worked,  
8 the amount of overtime worked, and the amount of unpaid overtime due.

9 66. As a proximate result of Defendants' violations, Plaintiff MITCHELL  
10 has been damaged in an amount in excess of \$1,000 and subject to proof at time of  
11 trial.

12 67. A typical employee might work 60 hours a week and miss breaks on  
13 five different days. MEDTRONICS would pay this employee (assuming \$17/hr)  
14 \$680 in regular time wages (\$17/hr x 40 hours) , \$510 in overtime wages (\$17/hr x  
15 1.5 x 20 hours) and \$85 in meal break premiums (5 x \$17). However, the proper  
16 regular rate of pay would be \$18.42/hr. This requires that overtime be paid at \$27.63  
17 per hour rather than \$25.50. As such, this hypothetical employee would be due an  
18 additional \$42.50 for this hypothetical week.

19 68. In addition, for work done in 2010 and prior, the commission payments  
20 made to the Sales Associates was not used to compute the regular rate of pay on  
21 which overtime was computed. That is, Sales Associates would earn commissions  
22 but that amounts earned were not used to compute the regular rate of pay on which  
23 overtime was paid. Instead, MEDTRONIC paid overtime only on the straight time  
24 hourly wage earned by the employee and did not include the commission in the  
25 calculation.

26 69. Pursuant to Labor Code §§ 218.6, 510, 1194 and California Code of  
27 Regulations, Title 8, § 11040, Plaintiff MITCHELL is entitled to recover damages  
28 for the nonpayment of overtime premiums for all overtime hours worked, penalties,

1 interest, plus reasonable attorney's fees and costs of suit.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ADEQUATE MEAL PERIODS UNDER**  
4 **CALIFORNIA INDUSTRIAL WELFARE COMMISSION ORDERS**  
5 **AND CALIFORNIA LABOR CODE SECTION 512**  
6 **(AGAINST MEDTRONIC)**

7 70. Plaintiff refers to and incorporates by reference Paragraphs 1 through  
8 69.

9 71. This cause of action is brought against MEDTRONIC.

10 72. This cause of action is brought on behalf of the Missed Breaks Class.

11 73. Pursuant to Industrial Welfare Commission Order No. 4-2001,  
12 California Code of Regulations, Title 8, § 11040, for the period of Plaintiff's  
13 employment, Defendants were required to provide a thirty (30) minute meal period  
14 for any person working more than five (5) hours in a day.

15 74. Defendants failed to provide Plaintiff a meal period for numerous days  
16 worked.

17 75. Defendants know or should know the dates for each missed meal period  
18 as well as the damages due.

19 76. Defendants failed to provide Plaintiff at least one meal period within the  
20 three (3) years prior to filing this lawsuit.

21 77. There are at least 300 employees working at any one time that did not  
22 receive their proper premium pay. A typical employee makes \$17/hr. Missing five  
23 (5) meal breaks a week would amount to \$5,508,000 in total damages.

24 78. Pursuant to Labor Code § 512 and California Code of Regulations, Title  
25 8, § 11040, Plaintiff MITCHELL is entitled to recover one (1) hour of pay at the  
26 regular rate of compensation for each workday that the meal period was not  
27 provided.

28 79. Plaintiff MITCHELL prays for damages for missed meals in excess of

1 \$17,680, and subject to proof at time of trial.

2 **THIRD CAUSE OF ACTION**

3 **OVERTIME PAY AND LIQUIDATED DAMAGES UNDER 29 U.S.C. § 207**  
4 **and § 216 (AGAINST ALL DEFENDANTS)**

5 80. Plaintiff refers to and incorporates by reference Paragraphs 1 through  
6 79.

7 81. This cause of action is brought on behalf of the Collective Action  
8 Plaintiffs.

9 82. This cause of action is brought against MEDTRONIC.

10 83. Plaintiff is informed and believes and hereon alleges that Defendants are  
11 subject to the provisions of the Fair Labor Standards Act. Under 29 U.S.C. § 207(a)  
12 and § 216(b), Plaintiff is entitled to overtime pay at a rate of one and one-half (1 ½)  
13 times the regular rate of pay for hours worked in excess of forty (40) hours in a  
14 week and an equal additional amount as liquidated damages, as well as costs and  
15 attorney's fees.

16 84. Plaintiff worked numerous weeks in excess of forty (40) hours.

17 85. Plaintiff was entitled to the above overtime premiums.

18 86. Defendants failed to compensate Plaintiff for any overtime premiums.

19 87. This court has jurisdiction over this cause of action because the federal  
20 statute specifically grants the employee the right to bring the action in "any Federal  
21 or State court of competent jurisdiction." 29 U.S.C. § 216(b).

22 88. Plaintiff worked at least one week in which overtime premiums were  
23 not paid by Defendants under the Fair Labor Standards Act within the two (2) years  
24 prior to initiating this lawsuit.

25 89. Plaintiff's individual employment is covered by the terms of the Fair  
26 Labor Standards Act.

27 90. Plaintiff used equipment on the job that had previously been transported  
28 in interstate commerce.

1 91. Defendant MEDTRONIC was the employer of Plaintiff, as the term  
2 "employer" is defined in the Fair Labor Standards Act.

3 92. Defendant MEDTRONIC was an enterprise covered by the provisions  
4 of the Fair Labor Standards Act for the entire time of Plaintiff's employment.

5 93. Defendant MEDTRONIC conducted business with a total gross sales  
6 volume in excess of \$500,000 for each and every twelve (12) month period in which  
7 Plaintiff was employed.

8 94. Defendant MEDTRONIC employed at least two (2) employees during  
9 each and every 12 month period in which Plaintiff was employed. These employees  
10 were engaged in commerce and regularly used equipment that had been transported  
11 in interstate commerce.

12 95. Defendant MEDTRONIC was the employer of Plaintiff, as the term  
13 "employer" is defined in the Fair Labor Standards Act.

14 96. Defendants' violations of 29 U.S.C. § 207 were willful and intentional.  
15 MEDTRONIC knew that the law required the additional wages be included in the  
16 regular rate of pay because it was specifically told so by Plaintiff's counsel.  
17 MEDTRONIC instead chooses to ignore the clear statutory requirements to pay  
18 proper overtime using the additional pay in the regular rate of pay calculation.

19 97. Plaintiff prays for judgment for overtime pay of \$1,000.

20 98. Plaintiff prays for judgment for liquidated damages in the amount of  
21 \$1,000. This amount is supplemental to the relief requested in all other causes of  
22 action.

23 99. Plaintiff prays for costs and attorney's fees.

24 **FOURTH CAUSE OF ACTION**

25 **VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS**

26 **CODE SECTION 17200**

27 **(AGAINST MEDTRONIC)**

28 100. Plaintiff refers to and incorporates by reference Paragraphs 1 through

1 99.

2 101. This cause of action is brought against MEDTRONIC.

3 102. This cause if brought on behalf of the Missed Break Class and the  
4 Regular Rate of Pay Class.

5 103. By failing to pay overtime premiums under California and/or the FLSA,  
6 Defendants' acts constitute unfair and unlawful business practices under Business  
7 and Professions Code § 17200, *et seq.*

8 104. By failing to provide adequate meal and rest breaks, Defendants' acts  
9 constitute unfair and unlawful business practices under Business and Professions  
10 Code § 17200, *et seq.*

11 105. Plaintiff MITCHELL prays for restitution under this Cause of Action in  
12 an amount subject to proof at time of trial.

13 **FIFTH CAUSE OF ACTION**

14 **PENALTIES FOR FAILING TO PAY WAGES UPON TERMINATION**  
15 **(AGAINST MEDTRONIC)**

16 106. Plaintiff refers to and incorporates by reference Paragraphs 1 through  
17 105.

18 107. This cause of action is brought against MEDTRONIC.

19 108. This cause of action is brought on behalf of the members of any class  
20 whose employment ended within the 3 years prior to the initiation of this lawsuit.

21 109. MEDTRONIC knew that unpaid regular rate of pay and meal payments  
22 were due to employees but refused to pay these wages when it terminated the  
23 employees.

24 110. In particular, MEDTRONIC changed its policy of computing overtime  
25 to include commission payments because it knew the policy was illegal. However,  
26 while MEDTRONIC fixed the problem going forward, it never retroactively paid the  
27 employees overtime for commissions earned in the past.

28 111. MEDTRONIC has payroll records that show how much overtime was

1 worked and how much commission was earned. Despite easily being able to  
2 compute the additional amounts owed to the employees, MEDTRONIC willfully  
3 refused to do so.

4 112. Plaintiff MITCHELL prays for penalties in the amount 30 days wages  
5 for each of the class members.

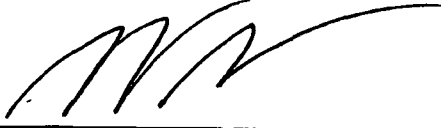
6  
7 **WHEREFORE**, Plaintiff prays for the following relief:

- 8 1. That this case be certified as a class action.
- 9 2. That this case be certified as a collective action.
- 10 3. Damages for overtime not paid to Plaintiff MITCHELL in an amount in  
11 excess of \$1,000 and subject to proof at trial.
- 12 4. For liquidated damages in the amount in excess of \$1,000 and subject to  
13 proof at trial.
- 14 5. For restitution to Class Members in an amount in excess of \$5,508,000.
- 15 6. Damages for meal premiums not paid to Plaintiff MITCHELL in excess of  
16 \$17,680, and subject to proof at trial.
- 17 7. For restitution and disgorgement for all unfair business practices against  
18 Plaintiff MITCHELL in an amount subject to proof at trial.
- 19 8. For prejudgment and post judgment interest.
- 20 9. Cost of suit.
- 21 10. Attorneys' fees.
- 22 11. For such other and further relief as the court may deem proper.

23 DATED: September 5, 2013

LAW OFFICES OF MICHAEL TRACY

24  
25  
26 By:

  
MICHAEL TRACY, Attorney for Plaintiff  
JOHN MITCHELL



**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial.

DATED: September 5, 2013

LAW OFFICES OF MICHAEL TRACY

By:



MICHAEL TRACY, Attorney for Plaintiff  
JOHN MITCHELL

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge Fernando M. Olguin and the assigned Magistrate Judge is Patrick J. Walsh.

The case number on all documents filed with the Court should read as follows:

2:13-CV-6624-FMO (PJWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

September 10, 2013

Date

By MDAVIS  
Deputy Clerk

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NOTICE TO COUNSEL

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

**Subsequent documents must be filed at the following location:**



Western Division  
312 N Spring Street, G-8  
Los Angeles, CA 90012



Southern Division  
411 West Fourth St, Ste 1053  
Santa Ana, CA 92701



Eastern Division  
3470 Twelfth Street, Room 134  
Riverside, CA 92501

**Failure to file at the proper location will result in your documents being returned to you.**

COPY

Michael L. Tracy, Esq. SBN237779  
 LAW OFFICES OF MICHAEL TRACY  
 2030 Main Street, Suite 1300  
 Irvine, CA 92614  
 949-260-9171  
 mtracy@michaeltracylaw.com

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

JOHN MITCHELL, an individual, on behalf of  
 himself and all others similarly situated,  
 PLAINTIFF(S)

v.

MEDTRONIC, INC., A MINNESOTA  
 CORPORATION,

DEFENDANT(S).

CASE NUMBER

CV13-06624

FMD/PSW

## SUMMONS

TO. DEFENDANT(S). \_\_\_\_\_

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ \_\_\_\_\_ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael Tracy, whose address is 2030 Main Street, Suite 1300, Irvine, CA 92614. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

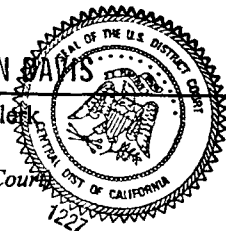
Dated: SEP 10 2013

By: \_\_\_\_\_

MARILYN BARTS

Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)]

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> )  JOHN MITCHELL, an individual, on behalf of himself and all others similarly situated		<b>DEFENDANTS</b>  MEDTRONIC, INC., A MINNESOTA CORPORATION	
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number If you are representing yourself, provide same)  Michael Tracy SBN 237779 Megan E. Ross SBN 227776 Law Office of Michael Tracy 2030 Main Street, Ste 1300, Irvine, CA 92614 (949)260-9171		Attorneys (If Known)	

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only)  <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b> (Place an X in one box for plaintiff and one for defendant)  <table style="width:100%; border: none;"> <tr> <td style="width:40%; border: none;">Citizen of This State</td> <td style="width:10%; border: none; text-align: center;">PTF</td> <td style="width:10%; border: none; text-align: center;">DEF</td> <td style="width:40%; border: none;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%; border: none; text-align: center;">PTF</td> <td style="width:10%; border: none; text-align: center;">DEF</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 1</td> <td style="border: none;"><input type="checkbox"/> 4</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> <tr> <td style="border: none;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF	DEF	Incorporated or Principal Place of Business in this State	PTF	DEF	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. ORIGIN** (Place an X in one box only)  
☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from another district (specify)    ☐ 6 Multi-District Litigation    ☐ 7 Appeal to District Judge from Magistrate Judge

**V. REQUESTED IN COMPLAINT**    **JURY DEMAND:** ☒ Yes    ☐ No (Check 'Yes' only if demanded in complaint)  
**CLASS ACTION** under F.R.C.P. 23. ☒ Yes    ☐ No    **MONEY DEMANDED IN COMPLAINT:** \$ 5,527,680

**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity)  
 29 U.S.C. Section 201 et seq. Failure to Pay Overtime

**VII. NATURE OF SUIT** (Place an X in one box only)

<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage-Product Liability <b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <b>FORFEITURE / PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl Ret Inc Security Act <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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CV13-06624

FOR OFFICE USE ONLY: Case Number

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes  
If yes, list case number(s) \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes  
If yes, list case number(s) CV11-04132-MWF-PLA

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☒ A Arise from the same or closely related transactions, happenings, or events, or  
☒ B Call for determination of the same or substantially related or similar questions of law and fact, or  
☐ C For other reasons would entail substantial duplication of labor if heard by different judges, or  
☐ D Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present

**IX. VENUE.** (When completing the following information, use an additional sheet if necessary )

- (a) List the County in this District, California County outside of this District, State if other than California, or Foreign Country, in which **EACH** named plaintiff resides  
☐ Check here if the government, its agencies or employees is a named plaintiff If this box is checked, go to item (b)

County in this District *	California County outside of this District, State, if other than California, or Foreign Country
Los Angeles	

- (b) List the County in this District, California County outside of this District, State if other than California, or Foreign Country, in which **EACH** named defendant resides  
☐ Check here if the government, its agencies or employees is a named defendant If this box is checked, go to item (c)

County in this District *	California County outside of this District, State, if other than California, or Foreign Country
Los Angeles	

- (c) List the County in this District, California County outside of this District, State if other than California, or Foreign Country, in which **EACH** claim arose.

**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District *	California County outside of this District, State, if other than California, or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note** In land condemnation cases, use the location of the tract of land involved

X SIGNATURE OF ATTORNEY (OR PRO PER)  Date 9/9/2013

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

**Key to Statistical codes relating to Social Security Cases**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended, plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))